

RECEIPT # 66115w
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BY DPTY. CLK. M
DATE 9-9-05

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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2005 SEP -7 P 3:41

U.S. DISTRICT COURT
DISTRICT OF MASS.

JUDITH COELHO and
DANIEL COELHO,
Plaintiffs

Plaintiffs

vs.

Pro Mutual Group

Defendant

05-11833 NMG

COMPLAINT

MAGISTRATE JUDGE Dein

JURISDICTION

The United States District Court has jurisdiction over this matter on the basis of diversity of citizenship pursuant to 28 U.S.C., Sections 1332 and 1441 et seq., as the parties are citizens of different states.

COUNT ONE

1. Plaintiffs Judith and Daniel Coehlo are residents of the State of Florida.
2. The Defendant, Pro Mutual Group, at all times herein mentioned, was a corporation providing medical malpractice insurance to physicians and maintained place of business in the Commonwealth of Massachusetts.

3. This is an action for damages pursuant to Regulations of Business Practices for Consumer Protection, G.L. c. 93A, section 2 and section 9 (1) & (3) as said regulations relate to the unfair methods of competition and unfair and deceptive acts and practices and that business of insurance, G.L. c. 176D, section 3, clause 9(f).

4. On or about April 10, 2003 the Plaintiffs filed a Complaint in the Barnstable County Superior Court, Commonwealth of Massachusetts, alleging that ALICE M. DALEY, M.D. and PMG Physician Associates, P.C. fell below the standard of care of the average qualified physician in their care and treatment of Plaintiff Judith Coehlo on December 18, 2000 through September 9, 2002.

5. Following the completion of discovery, it became reasonably clear that ALICE M. DALEY, M.D. and PMG Physician Associates, P.C. fell below the standard of care of the average qualified physician in their care and treatment of Plaintiff Plaintiff Judith Coehlo on December 18, 2000 through September 9, 2002.

6. As a result of the medical negligence of ALICE M. DALEY, M.D. and PMG Physician Associates, P.C. the Plaintiff Judith Coehlo did suffer a delay in the diagnosis of breast cancer resulting in permanent personal injuries.

7. Defendant, Pro Mutual Group, insured ALICE M. DALEY, M.D. and PMG Physician Associates, P.C for medical malpractice matters in the total amount of Three Million (\$3,000,000.00) Dollars.

8. On June 29, 2005 a detailed letter of demand outlining the failure of of ALICE M. DALEY, M.D. and PMG Physician Associates, P.C was sent to the Pro Mutual Group on behalf of the Plaintiffs demanding the limit of the insurance policy for each Defendant.

9. Defendant, Pro Mutual Group, did not make an offer of settlement in response to the letter of demand.
10. On August 3, 2005 the Plaintiffs sent Pro Mutual Group a final letter of demand pursuant to M.G.L. c. 93A, M.G.L. c. 176D, section 3.
11. The conduct of the defendant, Defendant Pro Mutual Group, in failing to respond to Plaintiffs' communication of August 3, 2005 with an offer to equitably, promptly and fairly settle this claim where liability has become reasonably clear constitutes unfair claims settlement practices by reason of the following act or omission under M.G.L. c. 176D, section 3:

Section 9 - Unfair Claims Practices

And unfair claim settlement practice shall consist of any of the following acts or omissions:

- (f) Failing to effectuate prompt, fair and equitable settlements of claims which liabilities has become reasonably clear;

12. The prohibiting conduct referred to in paragraph eleven and twelve in this complaint violates the provision of M.G.L. c. 93A section 2 which states: unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.
13. The acts and practices of Defendant Pro Mutual Group, that resulted in the loses hereinafter described, were done willfully or knowingly in violation of M.G.L. c. 93A section 2 as set forth above.

14. On August 3, 2005, the Plaintiff issued to Defendant, a written demand for relief pursuant to M.G.L. c. 93A, identifying the claim and reasonably describing the unfair or deceptive acts or practices relied upon and the injuries suffered. The written demand for relief dated August 3, 2005, and received by the defendants shortly thereafter is attached hereto and incorporated by reference as Exhibit 1.

15. During the thirty (30) days during which an offer or tender of settlement may have been made as prescribed by M.G.L. c. 93A, section 9 (3), the defendant, the Defendant Pro Mutual Group, failed to respond to plaintiff's 93A demand letter with a reasonable offer of settlement.

16. Defendant Pro Mutual Group's, refusal to grant adequate relief upon demand was made in bad faith with knowledge or reason to know that the acts or practices complained of violated M.G.L. c. 93A, section 2.

17. By reason of the Defendant Pro Mutual Group's past, present and continuing unfair claims to settlement practices, as set forth above in this complaint, Plaintiffs have and continue to be damaged by Defendant's delay or avoidance, whereby Defendant has been, is now and shall continue to realize unjust enrichment through interest and invested investment income for sums of money that Defendant, ought to have paid over to the Plaintiffs for said violation enumerated above.

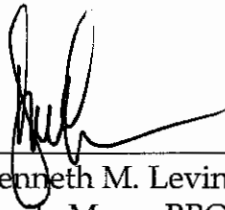
Wherefore, Plaintiffs prays as follows: That the damages actually caused to the plaintiffs for the unfair and deceptive act or practices complained of have been established, that judgment entered pursuant to M.G.L. c. 93A, section 9 (3) in the amount double or triple the actual damages established in section "a" above ; that the Plaintiff be awarded reasonable attorney's fees pursuant to M.G.L. c, 93A, section 9(4);], that Plaintiffs be awarded costs incurred in

connection with this action pursuant to M.G.L. c. 93A section 9(4); that this Honorable Court order such other relief as deemed proper and necessary under the circumstances.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL COUNTS

Respectfully submitted this 7th day of September, 2005.

The Plaintiffs By and Through Counsel,

A handwritten signature in black ink, appearing to be "K. M. Levine", written over a horizontal line.

Kenneth M. Levine, BBO# 296850
Sheila Mone, BBO# 634615
Kenneth M. Levine & Associates
370 Washington Street
Brookline, Massachusetts 02445
617-566-2700

KENNETH M. LEVINE & ASSOCIATES

ATTORNEYS AT LAW

370 WASHINGTON STREET

BROOKLINE, MASSACHUSETTS 02445

(617) 566-2700

Fax (617) 566-6144

August 3, 2005

Jeanne Marie Farulla
Pro Mutual Group
101 Arch Street
Boston, Massachusetts 02205-5178

RE : Coehlo v. Daley, M.D.

Dear Ms. Farulla,

I am in receipt of your July 29th letter concerning the Coehlo v. Daley case. I did call twice to speak with you, but was unable to reach you.

While I do appreciate your need to have the matter evaluated by experts, based upon the deposition of the Defendant Dr. Daley, it is apparent that all of the experts will be in agreement concerning the medicine. Dr. Daley in her deposition acknowledged that the need for mammogram, ultrasound and follow up of the peanut sized lump she noted in Ms. Coehlo's breast. Dr. Daley attempted to blame the failure for the follow up on Ms. Coehlo. We all seem to agree on what should have been done, the only question is who is at fault for not doing what was needed.

As I explained in my previous letter, Dr. Daley claimed to remember Ms. Coehlo due to the "fear in her eyes" when the lump was found. It is nonsense to suggest that the same person that had fear in her eyes, the mother of two young children, would then fail to go a mammogram, ultrasound or other for follow up appointments. As you know, the medical record is silent concerning a mammogram, ultrasound or other for follow up appointments. Dr. Daley's story that the office dictation system was broken, and that when she re-dictated the office note a day later she "forgot" to write down the mammogram and ultrasound referral is unbelievable and insulting. Somehow Dr. Daley was able to note a dermatology follow up, but not a follow up for possible breast cancer. I cannot say strongly enough that Dr. Daley is not being honest and will exposed as such at the trial.

Jeanne Marie Farulla

Page two

August 3, 2005

Therefore, please accept this letter as a formal demand pursuant to Massachusetts General Laws Chapter 176D and 93A. Pro Mutual has clearly and without question failed to properly investigate this matter. Had the case been properly reviewed it would be apparent that liability and damages are clear and that a good faith offer of settlement should have been made in reply to my previous correspondence.

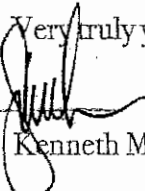
It is my intent to file suit in thirty days in the United States District Court against Pro Mutual Group for bad faith. At that time, I expect Pro Mutual to move to stay the proceedings pending the outcome of the underlying case. I will ask the Court to delay ruling on the motion until an in camera inspection of Pro Mutual's entire claim file can be performed. At that time I am certain your file will reveal that you had this case evaluated by experts some time ago. It is difficult to accept that Pro Mutual would litigate and defend a case for more than two years without any medical expert review of any type. Most likely you have been told the case is not defensible and are continuing to search for someone who will support your position.

It is not my aim to make the process more difficult, but to move the case forward. This case should be resolved, but in order for that to happen, Pro Mutual must make a fair settlement offer or agree to attend mediation. Neither has happened to date.

Pursuant to Massachusetts General Laws Chapter 176D and 93A demand for settlement is made for the full amount for the full amount of the PMG insurance policy of Two Million (\$2,000,000.00) Dollars and the full amount of Dr. Daley's insurance policy of One Million (\$1,000,000.00) Dollars for a total of Three Million (\$3,000,000.00) Dollars.

I look forward to hearing from you.

Very truly yours,



Kenneth M. Levine

KML/aaa

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS <u>Judith Coelho</u> <u>Daniel Coelho</u>	DEFENDANTS <u>Pro Mutual Group</u>
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorney's (Firm Name, Address, and Telephone Number) <u>Kenneth M. Levine + Associates (617) 866-8700</u> <u>370 Washington Street, Brookline, MA 02445</u>	Attorneys (If Known) <div style="font-size: 2em; font-weight: bold; text-align: center;">05-11833 NMG</div>

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)				
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">Plaintiff</th> <th style="text-align: left;">Defendant</th> </tr> <tr> <td> <input type="checkbox"/> 1 Citizen of This State <input checked="" type="checkbox"/> 2 Citizen of Another State <input type="checkbox"/> 3 Citizen or Subject of a Foreign Country </td> <td> <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 3 Foreign Nation </td> </tr> </table>	Plaintiff	Defendant	<input type="checkbox"/> 1 Citizen of This State <input checked="" type="checkbox"/> 2 Citizen of Another State <input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 3 Foreign Nation
Plaintiff	Defendant				
<input type="checkbox"/> 1 Citizen of This State <input checked="" type="checkbox"/> 2 Citizen of Another State <input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 3 Foreign Nation				

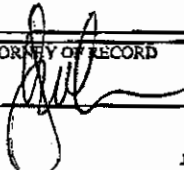
IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
	Brief description of cause: <u>Insurance Bad Faith</u>

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions):	JUDGE	DOCKET NUMBER
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DATE	SIGNATURE OF ATTORNEY OF RECORD	<u>9/7/05</u> 
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FOR OFFICE USE ONLY	RECEIPT #	AMOUNT	APPLYING IF	JUDGE	MAG. JUDGE
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Judith Coelho
Pro Mutual Group

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

none

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☒

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Kenneth M. Levine

ADDRESS 370 Washington Street, Brookline MA 02445

TELEPHONE NO. (617) 566-2700